

COMPLIANCE AUDIT REPORT

STATE OF MAINE WORKERS' COMPENSATION BOARD



GUARD INSURANCE GROUP DECEMBER 9, 2002

Monitoring, Audit & Enforcement (MAE) Division

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CONTENTS

SUMMARY	2
PENALTIES	7
♦ Section 205(3), M.R.S.A. Penalties (payable to injured employees)	7
PENALTIES (Continued).....	8
♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board).....	8
39-A M.R.S.A. Sec. 359(2)	8
39-A M.R.S.A. Sec. 360(1)(A).....	8
39-A M.R.S.A. Sec. 360(1)(B)	8
39-A M.R.S.A. Sec. 360(2)	8
INDEMNITY BENEFITS	9
A. Prompt Initial Payment of Benefits.....	9
B. Prompt Subsequent Payment of Benefits.....	9
C. Accuracy of Average Weekly Wage	9
D. Accuracy of Weekly Benefit Rate	9
FORM FILING	10
A. First Report (WCB-1)	10
B. Wage Statement (WCB-2)	10
C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A).....	10
D. Memorandum of Payment (WCB-3)	10
E. Discontinuance or Modification (WCB-4)	11
F. Certificate of Discontinuance or Reduction (WCB-8).....	11
G. Notice of Controversy (WCB-9).....	11
H. Statement of Compensation Paid (WCB-11).....	12

SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined a sample of 73 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 73 claim files audited:

- Thirty were “lost time” claims (Of the 30 “lost time” claims audited, 11 were compensated.)
- Thirty were “medical only” claims.
- Thirteen were “incident only”¹ claims.

Guard Insurance Group (Guard) handles all of its “lost time” claims in its Bedford, New Hampshire office. They handle all other claims in their Wilkes-Barre, Pennsylvania office.

Our on-site audit of Guard began April 22, 2002, and ended April 25, 2002.

The compliance tables found on pages 9 through 12 of this report are representative of our findings as of April 25, 2002. Since that time, this Audit Division has requested missing form filings, form corrections, and payment adjustments. The first request was e-mailed to Guard on May 6, 2002, and had a response deadline of May 20, 2002. Guard's response did not include all of the requested forms, and some inaccuracies were found on the forms and documents that were submitted. Therefore, we sent a second request for forms, corrections and additional information to Guard on May 29, 2002, and provided a response deadline of June 12, 2002.

Following is a discussion of the aforementioned compliance tables and of the steps taken since April 25, 2002 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by our audit.

- Form filing compliance ranged from 0 percent to 100 percent.
 - ◆ The highest percent of compliance (100 percent) was found in the filing of:
 - WCB-8, Certificate of Discontinuance or Reduction of Compensation forms, and
 - WCB-9, Notice of Controversy (NOC) forms for “medical only” claims.
 - ◆ The second highest percent of compliance (89 percent) was found in the filing of WCB-4, Discontinuance or Modification of Compensation forms.

¹ “Incident only” claims incur no medical expenses and less than a day of lost time.

SUMMARY (continued)

- The WCB-4 form shown as “Not Filed” represents a claim where compensation had been discontinued, but no WCB-4 form had been filed. This Division requested that form on May 6, 2002, and imposed a response deadline of May 20, 2002. The form was not filed until May 23, 2002.
- ◆ Seventy-five percent compliance was found in the filing of WCB-9, Notice of Controversy forms for “lost time” claims.
 - The NOC shown as “Filed Late” represents a claim where the NOC was filed 37 days after the employer was notified of the incapacity.
- ◆ Seventy-two percent compliance was found in the filing of WCB-1, Employer’s First Report of Occupational Injury or Disease forms.
 - The five First Reports shown as “Filed Late” were all filed later than seven days after the employer’s notice of incapacity, but all had been filed prior to our on-site work.
 - The four First Reports shown as “Not Filed” represent claims where the employees lost more than a day from work, but no First Reports had been filed at the time of our on-site work. All four forms were promptly filed in response to this Division’s first request.

Guard provides a “toll-free 24/7 reporting hot line” service for its clients, whereby employers call in reports of injury to a central (Guard) location. That information is keyed onto the WCB-1 form (for Maine claims), and those forms are then printed out in Guard’s field offices. Guard assumes responsibility for filing reportable WCB-1 forms with the WCB when they receive reports of injury through this process. All of the “Filed Late” and “Not Filed” WCB-1 forms mentioned above were received through this process. Guard received timely notice for seven of those nine claims.

- ◆ Forty-six percent compliance was found in the filing of WCB-3, Memorandum of Payment (MOP) forms.
 - The four MOPs shown as “Filed Late” were all filed later than fourteen days after the employer’s notice of incapacity, but all had been filed prior to our on-site work.
 - This Division requested the two MOPs shown as “Not Filed” on May 6, 2002, and imposed a response deadline of May 20, 2002. Neither of those forms was filed until May 23, 2002.
- ◆ Twenty-percent compliance was found in the filing of WCB-11, Statement of Compensation Paid forms.
 - The three WCB-11 forms shown as “Filed Late” were all filed later than 195 days from their respective dates of injury, but all had been filed at the time of our on-site work.

SUMMARY (continued)

- This Division requested the five WCB-11 forms shown as “Not Filed” on May 6, 2002, and imposed a response deadline of May 20, 2002. One of those forms was promptly filed in response to our request, but the other four forms were not filed until May 23, 2002.
- ◆ Eight-percent compliance was found in the filing of WCB-2, Wage Statements.
 - The six WCB-2 forms shown as “Filed Late” were all filed after their due dates, but all had been filed at the time of our on-site work.
 - This Division requested all six WCB-2 forms shown as “Not Filed” on May 6, 2002, and imposed a response deadline of May 20, 2002. None of those forms were filed until after that deadline (Three were received May 23, 2002, two were received June 20, 2002, and one has not yet been received.)

It appears that some of the employers (insured by Guard) are often slow, and sometimes uncooperative, in regard to providing wage information to Guard and to the WCB. Those employers may not be fully aware of their legal responsibilities or of the potential repercussions from their inaction. Therefore, we encourage Guard to assume a more proactive and aggressive role with those employers. This would improve compliance and facilitate Guard’s claims-handling processes.

- ◆ Zero-percent compliance was found in the filing of WCB-2A, Schedule of Dependent(s) and Filing Status Statements.
 - The six WCB-2A forms shown as “Filed Late” were filed after their due dates, but all had been filed at the time of our on-site work.
 - This Division requested all seven WCB-2A forms shown as “Not Filed” on May 6, 2002, and imposed a response deadline of May 20, 2002. None of those forms were filed until after that deadline (Six were received May 23, 2002 and one was received July 12, 2002.)
- Incorrect dates were reported in Box 24 (Date Check Mailed) of the initial MOPs for ten of the eleven compensated claims.
 - ◆ Box 24 of the MOP should accurately reflect the date that the initial indemnity payment is sent to the employee.
 - This issue was discussed in the Exit Conference (dated June 21, 2002).
- Thirty-percent of the initial indemnity payments were made timely.
 - ◆ Three of the four initial indemnity payments shown as “29+” were made later than 30 days after payment became due and payable. Two of those three payments are subject to the provisions of §205(3) (see page 7), but the third payment was protected by a late-filed NOC.

SUMMARY (continued)

- Seventy-six and three-tenths percent of the subsequent indemnity payments were made timely.
 - ◆ One of the seven subsequent indemnity payments shown as “15+” was made later than 30 days after payment became due and payable, and is subject to the provisions of §205(3) (see page 7).
- The average weekly wage (AWW) was calculated correctly for 55 percent of the compensated claims audited.
 - ◆ One “Incorrect” AWW represents a claim where three weeks with no earnings were included in the calculation of the AWW. This error resulted in a lower AWW and compensation rate, and a cumulative underpayment of \$1746.06 (as of April 21, 2002).
 - Upon request from this Division, Guard corrected this error (and underpayment) both retroactively and prospectively (The injured employee was still incapacitated at the time of our audit.) They also filed the appropriate WCB form necessary to report the rate change.
 - ◆ The second “Incorrect AWW represents a claim where 43 weeks of earnings were provided on the Wage Statement. Guard used only 31 of those weeks of earnings, and divided the total by 32 weeks. These errors resulted in a higher AWW and compensation rate, and a cumulative overpayment of \$76.11.
 - ◆ The third “Incorrect” AWW represents a claim where three weeks with no wages were included in the calculation of the AWW. Although this error resulted in a lower AWW and compensation rate, this employee was actually overpaid (\$505.67) because a higher estimated AWW and compensation rate were used to pay benefits prior to Guard’s receipt of the wage information.
 - ◆ The two “Unknown” AWWs represent claims where no Wage Statements had been filed (with Guard or with the WCB) at the time of our on-site work.
- Weekly benefit rates were calculated correctly for 46 percent of the compensated claims audited.
 - ◆ The two rates shown as “Incorrect” are directly linked to the first and third “Incorrect” AWWs discussed above.
 - ◆ Two of the four rates shown as “Unknown” are directly linked to the above-mentioned “Unknown” AWWs.
 - No WCB-2A form had been filed (with Guard or with the WCB) for one of those claims at the time of our on-site work.

Upon receipt of the WCB-2 and WCB-2A forms for this claim, we found that the employee had been overpaid (\$77.58) because a high estimated AWW and compensation rate had been used to calculate benefits prior to Guard’s receipt of those wage forms.

SUMMARY (continued)

- ◆ The other two “Unknown” rates represent claims where compensation rates could not be determined because no WCB-2A forms had been filed (with Guard or with the WCB) at the time of our on-site work.
- In addition to the three overpaid claims that were mentioned previously in this summary, four other claims were also overpaid.
 - ◆ One claim was overpaid (\$525.21) because fringe benefits had been erroneously included in calculating the employee’s AWW and compensation rate. This error was detected and corrected (prospectively) prior to our audit.
 - ◆ One claim was overpaid (\$409.63) because the employee received wages (during her incapacity) that were not considered at the time the workers’ compensation benefits were paid.
 - ◆ Two claims were overpaid (\$9.28 and at least \$1346.23, respectively) because high estimated AWWs and compensation rates were used to calculate benefits. Guard did not receive the wage information for these claims until after all indemnity benefits had been paid.
- In addition to the underpaid claim that was mentioned previously in this summary, one other claim was underpaid because of an error in calculating partial benefits.
 - ◆ Partial benefits were calculated incorrectly at the time of incapacity, but Guard reviewed this claim (shortly after we engaged them in this audit) and discovered and corrected most of the errors at that time. However, they overlooked the fact that three weeks of partial wages had been considered aggregately, rather than separately, when benefits were calculated.
 - This Division pointed out that error, and Guard promptly paid the balance due (\$13.28) and filed the appropriate WCB forms necessary to report the adjustment.

The aggregate of all overpayments and underpayments previously mentioned in this summary results in a net overpayment of \$1,190.37.

It is important to note that Guard underwent some significant personnel changes during 2001. Since that time, their new staff has received training from a reputable law firm that specializes in Maine Workers’ Compensation Law. They have also worked cooperatively with WCB personnel to expand their expertise and to improve their compliance.

Furthermore, Guard has been working, and continues to work, to improve its technological support systems. This is very commendable. However, it was noted at the time of our on-site work that Guard frequently experienced technical difficulties (systems crashed) which could seriously impair their claims-handling efficiency.

At the time of our on-site work, Guard’s staff was very knowledgeable of Maine Workers’ Compensation Law requirements, and they seemed very competent and cooperative. Given these facts, we expect to find considerable improvement in our future audits of Guard Insurance Group.

PENALTIES

The penalties listed on this page and on page 8 of this report are representative of compliance as measured on May 20, 2002. (May 20, 2002 was the deadline given for response to the Audit Division's first request for information, forms and corrections needed.)

◆ Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Matthew Audet vs. Victor News, Inc. Date of Injury: 1-10-01 Guard's File #: VIWC203670-001 WCB File #: 1-336	No NOC was filed, and the first indemnity payment (3-6-01) was made 40 days after compensation became due and payable (1-25-01).	\$500.00
Leslie Clark vs. Domino's Pizza Date of Injury: 3-18-01 Guard's File #: DOWC136335-008 WCB File #: 1-5050	The final indemnity payment (10-24-01) was made 128 days after the previous indemnity payment (6-18-01)	\$1,500.00
Freeman Eugley vs. Soule's Auto Supply, Inc. Date of Injury: 3-10-01 Guard's File #: SOWC145563-001 WCB File #: none	No NOC was filed, and the first indemnity payment (5-7-01) was made 43 days after compensation became due and payable (3-25-01).	\$650.00
Total Penalties to Injured Employees		\$2,650.00

PENALTIES (Continued)

◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

- Nineteen (19) forms were not filed (\$1,900).

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Thirty (30) forms were filed late (\$3,000).

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

INDEMNITY BENEFITS

A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	3	30%
15-28	Days		3	30%
29+	Days		4	40%
Total Due			10	100%

In addition to the initial payments shown above, a NOC was timely-filed on a claim that was later found to be compensable.

B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	Compliant	100	76.3%
8-14	Days		24	18.3%
15+	Days		7	5.4%
Total Due			131	100.0%

C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	6	55%
Incorrect			3	27%
Unknown			2	18%
Total			11	100%

D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	5	46%
Incorrect			2	18%
Unknown			4	36%
Total			11	100%

FORM FILING

A. First Report (WCB-1)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	23	72%
Filed Late		5	16%
Not Filed		4	12%
Total		32	100%

In addition to those shown above, one WCB-1 form was filed, but not required, for a “medical only” claim (No NOC was filed on that claim.)

B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	8%
Filed Late		6	46%
Not Filed		6	46%
Total		13	100%

C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Filed Late		6	46%
Not Filed		7	54%
Total		13	100%

D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	5	46%
Filed Late		4	36%
Not Filed		2	18%
Total		11	100%

FORM FILING (Continued)

E. Discontinuance or Modification (WCB-4)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	8	89%
Not Filed		1	11%
Total		9	100%

F. Certificate of Discontinuance or Reduction (WCB-8)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	100%
Not Filed		0	0%
Total		1	100%

G. Notice of Controversy (WCB-9)

Lost Time Claims		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	75%
Filed Late		1	25%
Not Filed		0	0%
Total		4	100%

Medical Only Claims		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	100%
Not Filed		0	0%
Total		2	100%

FORM FILING (Continued)

H. Statement of Compensation Paid (WCB-11)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	20%
Filed Late		3	30%
Not Filed		5	50%
Total		10	100%